SITI JULIANA SUEN ABDULLAH & ORS A

v.

SUNGEI WANG PROPERTIES SDN BHD & ORS

HIGH COURT SABAH & SARAWAK, SIBU B
HAMID SULTAN ABU BACKER JC
[SUIT NO: 22-48-2002]
31 MARCH 2009

CIVIL PROCEDURE: *Costs - Getting up fee - Application for review - Rules of the High Court 1980, O. 59 r. 36(1) - Subordinate Courts Rules 1980, O. 48 r. 21* C

This was the plaintiffs' application to review the taxation of costs by the learned deputy registrar pursuant to O. 59 r. 36(1) of the Rules of the High Court 1980. The plaintiffs' taxation application arose in consequence of an order of costs relating to their application that sought to expunge certain exhibits of the defendants in their affidavit. The plaintiffs claimed a sum of RM20,000 as getting up fee. The learned judge allowed a sum of RM3,000. The defendants applied for review and the registrar reduced it to a sum of RM1,500. The plaintiffs complained that the reduction was manifestly excessive and the getting up fee of RM1,500 was very low and unreasonable. Further, it was not based on established principles nor did it reflect on comparable claims in comparable cases. D E F

Held (dismissing the application):

(1) It is well settled that the court will not interfere with the decision of the taxing registrar upon a mere question of quantum unless it can be shown that the registrar has made an obvious error or acted on mistaken principles in exercising his discretion. (para 4) G

(2) The plaintiff's application for getting up fee in the sum of RM20,000 for an interlocutory application was not only excessive but oppressive and ought not to be entertained. As a general rule, the getting up fee should not exceed RM2,000 in a contested application in respect of procedural points or directions from court. Applications involving issues of law and fact but relating only to mundane matters should not exceed RM5,000. If there is some level of complexity, then it should not exceed RM10,000 unless the subject matter involved in H I

respect of the application and not the suit proper is one that is extremely crucial, taking into consideration the quantum of the claim as the case may be. Such application must be very rare. (para 4)

(3) Registrars must take note that it is not desirable to grant excessive getting up fee for interlocutory applications. This jurisprudence must not be forgotten. Support for the proposition is found in O. 48 r. 21 of the Subordinate Court Rules 1980. (para 4)

(4) The established criteria for assessment of getting up fee under the caption skill, experience, special knowledge etc. may not be sufficient if the court has not taken into consideration the issue of affordability to justice. Bad precedents must be read with caution when the sole discretion as to costs rests with the respective judge. Much weight ought to be given to the issue of access and affordability to justice when dealing with getting up fee. In consequence, getting up fee ought not to be excessive and in this respect, the court ought not to be least concerned of the winning party's costs to its solicitors where the law is settled and in cases where even a novice counsel can articulate the argument. (para 4)

(5) The learned judge correctly applied her discretion by awarding the sum of RM1,500 for getting up fee. (para 5)

Case(s) referred to:
Hong Leong Bank Bhd v. Lee Khai Sin [2008] 7 CLJ 129 HC ***(refd)***
Parl Singh Gurdial Singh v. Wisma Perak Sdn Bhd [2005] 6 MLJ 61 ***(refd)***

Legislation refered to:
Rules of the High Court 1980, O. 59 r. 36(1)
Subordinate Court Rules 1980, r. 21

For the plaintiffs - M/s Tai Choi Yu & Co
For the defendants - M/s Battenberg & Talma

Reported by Usha Thiagarajah

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the plaintiffs' "summons to review taxation by judge" (encl. 156) pursuant to O. 59 r. 36(1) of the Rules of the High Court (RHC) 1980, to review the decision of the learned deputy registrar.

Brief Facts

[2] The taxation application of the plaintiff arose in consequence of order of costs relating to the plaintiffs' application (encl. 32) which sought to expunge certain exhibits of the defendants in their affidavit. The plaintiffs claimed a sum of RM20,000 as getting up fees. The learned deputy registrar allowed a sum of RM3,000 and upon review application made by the defendants, the registrar reduced it to a sum of RM1,500. The plaintiffs' complaint *inter alia* can be summarized as follows:

(a) The tax-off is manifestly excessive and the review of the getting-up of RM1,500 allowed is manifestly low and in sufficient and is not made and/or based on established principles nor does it reflect on comparable claims in comparable cases and the amount allowed is unreasonable for the following reasons:

(i) The amount of tax allowed of RM1,500.00 infringes on the established legal principles of taxation and/or that the purported taxation was not based on any legal principles and/or that no principle of taxation was advanced for the reduction of another RM1,500.00 on the Review by the deputy registrar;

(ii) That the said reduction of RM1,500.00 was neither legally justifiable nor based on any principle of law but was made at the whim and fancy of the Deputy Registrar;

(iii) The deputy registrar failed to appreciate or consider the skill, experience, special knowledge, responsibility of the counsel and time and labour expended by the Plaintiffs' counsel which should be reflected for the work done;

(iv) The deputy registrar failed to appreciate or to consider that the action was not heard in an inferior Court like the tribunals or Magistrate or Sessions Court but before High Court which is a Superior Court and the Costs granted must reflect the standing and prestige of the High Court;

(v) This action was one of difficultly and novelty with questions of law involved; and

(vi) The deputy registrar failed to appreciate and/or to consider in law that costs granted must be evaluated in accordance to what has actually transpired in court and the chronology of events: the deputy registrar never took this into consideration or she made the wrong observation or evaluation.

[3] The defendants say that they consented to the plaintiffs' application and in consequence there should in fact be no order as to costs.

[4] I have read the application affidavits and submissions of the parties in detail. I take the view that the plaintiffs' application for review must be dismissed. My reasons are as follows:

(a) It is well settled that the court will not interfere with the decision of the taxing registrar upon a mere question of quantum unless it can clearly be shown that the registrar had made an obvious error or acted on mistaken principles in exercising his discretion. I have dealt with this area of law in detail in the case of *Hong Leong Bank Bhd v. Lee Khai Sin* [2008] 7 CLJ 129. I do not wish to repeat the same here.

(b) The plaintiffs' seeking a getting up fee of RM20,000 for an interlocutory application which was consented to, surely is not only excessive but oppressive and ought not be entertained. I would have thought that all things being equal and as a general rule a contested application in respect of procedural points or directions from court, the getting up fees should not exceed RM2,000. Often applications which involve issues on law and fact but relating only to mundane matters should not exceed RM5,000. If there is some level of complexity, then it should not exceed RM10,000,00 unless the subject matter involved in respect of the application not the suit proper is one which is extremely crucial taking into consideration the quantum of the claim as the case may be. Such application in my view must be very rare.

(c) Registrars must take note that it is not desirable to grant excessive getting up fees for interlocutory applications. This jurisprudence must not be forgotten. Support for the proposition is found in the Subordinate Court Rules 1980, O. 48 r. 21 (Editor's note: O. 48 r. 21 Subordinate Courts Rules 1980 [P.U.(A) 328/1980] has been amended by P.U.(A) 331/2006 to read RM500 and RM1,000 respectively) where it is specifically stated that:

> In an interlocutory application the court may allow a sum not exceeding RM25 as costs:
>
> Provided that the court may, as it thinks just, in an interlocutory application involving a difficult question of law or fact, allow costs at an amount not exceeding RM100.00.

In *Parl Singh a/l Gurdial Singh v. Wisma Perak Sdn. Bhd* [2005] 6 MLJ 61. Raus Sharif J (as he then was) held:

> The sessions judge erred when he awarded the plaintiff costs which was calculated on a solicitor-client basis. Costs for interlocutory proceedings were fixed pursuant to O. 48 r. 21 of the Subordinate Court Rules 1980. Further O. 48 r. 28 states that no costs for advocacy should be allowed where the plaintiff entered judgment under O. 26A.

(d) Further, access to justice must necessarily mean that the court must not be unscrupulous in deciding on the issue of affordability to justice. Access to justice and affordability is within the spirit and intent of the Federal Constitution and I will say by reading the Federal Constitution as a whole, access and affordability to justice attains a unique stature and stands as a fundamental guarantee under the Federal Constitution. The established criteria for assessment of getting up fees under the caption skill, experience, special knowledge, etc in my view may not be sufficient if the court has not taken into consideration the issue of affordability to justice. Bad precedents must be read with caution when the sole discretion as to costs rest with the respective judge and much weight ought to be given to the issue of access and affordability to justice when dealing with getting up fees. (See 'Access to Justice' – interim report 1995 – Lord Woolf). In consequence, getting up fees ought not be excessive and in this respect court ought to be least concerned of the winning parties' costs to its solicitors, where the law is settled and in cases where even a novice counsel can articulate the argument.

[5] For reasons stated above, I take the view that the learned registrar has correctly applied her discretion by awarding the sum of RM1,500 for getting up fee. In consequence, I dismiss the plaintiffs' application with no order as to costs.

I hereby order so.